

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
)	
vs.)	CRIM. NO. 07-00331-CG-C
)	
BRENT LABARRON PUGH,)	
)	
Defendant.)	

ORDER

This matter is before the court on the petition filed by the defendant to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 69). In that petition, the defendant requested that his convictions on Counts 3 and 4 be vacated because other persons had since confessed to the bank robbery at issue in those counts and exonerated the defendant. He also argued that Count 5 should be vacated because the Government withheld exculpatory evidence in connection with the bank robbery alleged in Count Five.

The issues raised concerning Counts 3 and 4 have been disposed of by the granting of the a motion for new trial on those counts, (Doc. 82), and the subsequent granting of the Government's motion to dismiss those two counts (Docs. 84 and 85). The petition is therefore **Moot** as to the relief requested on Counts 3 and 4.

As to the petition's allegations concerning Count 5, the Government has admitted that it failed to disclose the results of DNA testing which excludes the defendant as the source of DNA on clothing from the scene of the robbery alleged in Count 5. The Government further admits that the petition should be granted as to Count Five of the Indictment, and asked that the case be reset for trial on that count.

Accordingly, the following is **ORDERED**:

Defendant's conviction and sentence on Count Five of the Indictment are hereby **VACATED**.

A retrial on **Count 5** will take place during the **August 2010** criminal trial term. **The defendant shall be immediately returned to this district**, and the case is referred to the magistrate judge for a determination of whether pretrial detention is warranted and for a pretrial conference.

DONE and **ORDERED** this 16th day of June, 2010.

/s/ Callie V. S. Granade
UNITED STATES DISTRICT JUDGE